No. 89-143

In the Supreme Court of the United States

OCTOBER TERM, 1989

PAUL A. LATRAVERSE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether federal law governs the lawfulness of a search conducted by state police officers for purposes of determining the admissibility of evidence in a federal court.

2. Whether the police officers failed to comply with the knock-and-announce statute, 18 U.S.C. 3109, before entering petitioner's apartment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 873 F.2d 7. The opinion of the district court (Pet. App. 9a-21a) is reported at 696 F. Supp. 783.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 1989. The petition for a writ of certiorari was filed on July 13, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On April 14, 1987, the government instituted this action for civil forfeiture under 21 U.S.C. 881(a)(7) (Supp. V

1987) against the real property located at 147 Division Street, Woonsocket, Rhode Island. The forfeiture complaint alleged that an apartment on the property owned by petitioner had been used to facilitate the commission of felony drug offenses in violation of 21 U.S.C. 841(a)(1) and 846. Petitioner filed a claim to the property and moved to suppress a quantity of cocaine and narcotics paraphernalia seized by local police officers during the execution of a state search warrant for the apartment. The district court denied the motion to suppress, and it subsequently entered a judgment of forfeiture in favor of the government and against the real property. The court of appeals affirmed.

1. The evidence at the suppression hearing showed that officers of the Woonsocket police department executed a state search warrant for petitioner's apartment at approximately 9:30 p.m. on July 1, 1986. The apartment was on the ground level, and the building had front and side entrances. The front building door opened into a small communal area that led to the front door of petitioner's apartment. The side building door opened into a small hallway that led to the back door of petitioner's apartment. Upon their arrival, the police officers divided into three teams. Four officers approached the front building door, four officers proceeded to the side building door, and the remaining officers positioned themselves around the perimeter of the building. Pet. App. 4a, 10a-11a.

As the second team of officers proceeded to the side door near the back of the building, they observed and heard the first team of officers knocking on the front building door. When the second team reached the side door, they encountered a man leaving the building, and one of the officers detained him. The other three officers went through the side door, which had been left open, and proceeded down the hallway to the back door of petitioner's apartment. In the hallway, the officers could hear the first team knocking on the front door of the building and shouting "police." Pet. App. 4a, 11a, 19a.

When the officers reached the back door of petitioner's apartment, Officer Landreville knocked on the door and said "police." After waiting five to ten seconds, Officer Flood said, "Let's go in." Landreville then forced the door open, and the officers entered the apartment. Flood found petitioner and two other individuals in the bathroom, and he ordered them into the kitchen area. Pet. App. 4a, 11a-12a, 19a.

In the meantime, the first team of officers had been knocking at the front door of the building. After waiting 20 to 30 seconds, the officers broke open the door and proceeded to the front door of petitioner's apartment. One officer kicked the apartment door open, and the officers went through an empty living room to the kitchen, where petitioner and the other two individuals were seated at a table under the supervision of Officers Landreville and Flood. During the ensuing search, the officers found cocaine and narcotics paraphernalia in the bathroom, as well as additional smaller amounts of cocaine in other parts of the apartment. Pet. App. 4a, 12a; Pet. 7.

2. The district court denied petitioner's motion to suppress the evidence seized in the apartment. Pet. App. 9a-21a. It first ruled that federal, rather than state, law should be applied to determine the validity of the search. *Id.* at 12a-18a. The court therefore rejected petitioner's claim that the search was invalid because the search warrant did not authorize a night-time search in the absence of a showing of "good cause" by the officers under state law.[1] The court pointed out that Fed. R. Crim. P. 41(h) defines "daytime" to mean "the hours between 6:00 a.m. and 10:00 p.m." Pet. App. 20a-21a. Since "the warrant was executed at approximately 9:30 p.m.," the court concluded that "any

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[1] Rule 41(c) of the Rhode Island District Court Rules of Criminal Procedure provides in pertinent part that a "warrant shall direct that it be served in the daytime, unless for good cause shown it provides for its execution at any time of day or night."

showing of exceptional cause [was] unnecessary." *Id.* at 21a.

The district court also concluded that the officers had adequately complied with the federal knock-and-announce statute, 18 U.S.C. 3109, before entering the back door to the apartment.[2] Pet. App. 18a-21a. The court found that Officer Landreville was justified in entering five to ten seconds after knocking and announcing "police" because "Landreville's knowledge that the occupants were not responding to the front door knocks contributed to a reasonable belief, formed five to ten seconds after he himself knocked, that an additional wait would be fruitless." *Id.* at 20a. The court accordingly held that "the forced entry was reasonable under the circumstances." *Ibid.*

3. The court of appeals affirmed. Pet. App. 1a-6a. Relying on its earlier decision in *United States* v. *Aiudi*, 835 F.2d 943 (1st Cir. 1987), cert. denied, 108 S. Ct. 1273 (1988), the court of appeals agreed with the district court's conclusion that "'state-seized evidence is admissible in federal courts if it was obtained in accordance with federal requirements even though it may have been obtained by state officers in violation of state law.'" Pet. App. 2a. The court accordingly concluded that the officers' execution of the search warrant at 9:30 p.m. did not render the search invalid because "[f]rom the federal standpoint the property was fully subject to search at that hour." *Id.* at 3a.

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[2] Section 3109 states:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

The court of appeals also agreed with the district court's ruling that the officers had complied with the federal knock-and-announce statute. Rejecting petitioner's claim that Officer Landreville was not justified in entering the apartment after waiting only five to ten seconds, the court emphasized that "even before Landreville reached the side entrance he heard the other team banging on the front door and shouting 'Police,' which presumably was being heard in the apartment, and was not being responded to." Pet. App. 4a. The court also noted that "[t]he fact that the officers had probable cause to believe that the occupants possessed cocaine, a substance that is easily and quickly removed down a toilet[,] is additional justification for the shorter wait before entry." *Id.* at 5a.

Finally, the court ruled that the officers had sufficiently announced their purpose by pounding on the front building door and yelling "police." Distinguishing *Miller* v. *United States*, 357 U.S. 301 (1958), the court emphasized that "[t]he focus * * * is properly not on what 'magic words' are spoken by the police, but rather on how these words and other actions of the police will be perceived by the occupant." Pet. App. 5a. Since the officers' conduct left no doubt as to their purpose, the court found that "it would [not] have made any difference to [petitioner's] perceptions had the police here, in addition to yelling 'Police,' shouted 'Search Warrant.'" *Id.* at 6a. The court therefore concluded that "the announcement, under the particular circumstances of this case, gave [petitioner] sufficient notice under [the federal knock-and-announce statute]." *Ibid.*

ARGUMENT

1. Petitioner renews his contention (Pet. 8-13) that the district court should have applied state rather than federal law to determine the validity of the search of his apartment. The court of appeals correctly rejected that contention. In *Elkins* v. *United States*, 364 U.S. 206, 223-224 (1960), a case involving a search by state officers without federal

participation, this Court ruled that the lawfulness of a search for purposes of determining the admissibility of evidence in a federal court is a question of federal law. Subsequently, in *Preston* v. *United States*, 376 U.S. 364, 366 (1964), this Court added that "[t]he question whether evidence obtained by state officers and used against a defendant in a federal trial was obtained by unreasonable search and seizure is to be judged as if the search and seizure had been made by federal officers." See also *Cooper* v. *California*, 386 U.S. 58, 60-62 (1967); *On Lee* v. *United States*, 343 U.S. 747, 754-755 (1952); *Olmstead* v. *United States*, 277 U.S. 438, 468-469 (1928).

Contrary to petitioner's claim (Pet. 12-13), the decision of the court of appeals in this case does not conflict with the decision of any other court of appeals. The courts of appeals uniformly agree that the lawfulness of a search for purposes of determining the admissibility of evidence in a federal court is a question of federal law and that evidence may be admitted at trial if a search was valid under federal law, regardless of its legality under state law. See, *e.g.*, *United States* v. *Jorge*, 865 F.2d 6, 10 n.2 (1st Cir.), cert. denied, 109 S. Ct. 1762 (1989); *United States* v. *Mealy*, 851 F.2d 890, 907 (7th Cir. 1988); *United States* v. *Baker*, 850 F.2d 1365, 1368 n.2 (9th Cir. 1988); *United States* v. *Pforzheimer*, 826 F.2d 200, 202-204 (2d Cir. 1987); *United States* v. *Shegog*, 787 F.2d 420, 422 (8th Cir. 1986); *United States* v. *Mitchell*, 783 F.2d 971, 973-974 (10th Cir.), cert. denied, 479 U.S. 860 (1986); *United States* v. *Rickus*, 737 F.2d 360, 363-364 (3d Cir. 1984); *United States* v. *Montgomery*, 708 F.2d 343, 344 (8th Cir. 1983); *United States* v. *Butera*, 677 F.2d 1376, 1380 (11th Cir. 1982), cert. denied, 459 U.S. 1108 (1983); *United States* v. *Combs*, 672 F.2d 574, 578 (6th Cir.), cert. denied, 458 U.S. 1111

(1982); *United States* v. *Staller*, 616 F.2d 1284, 1289 n.7 (5th Cir.), cert. denied, 449 U.S. 869 (1980).[3]

2. Petitioner also renews his contentions (Pet. 13-18) that the officers violated the knock-and-announce statute, 18 U.S.C. 3109, because they did not give him sufficient time to respond to their knocking and because they failed to announce their purpose. The court of appeals correctly rejected those essentially factual contentions.

Petitioner first claims that the officers violated the knock-and-announce statute because they did not give him sufficient time to respond. As the courts below explained, however, "[t]he fact that the front door knocking continued and remained unanswered even before [Officer] Landreville knocked on the back door certainly supports the inference that the occupants were not going to be promptly forthcoming." Pet. App. 4a-5a, 20a. Petitioner's failure to admit the officers in those circumstances, coupled with the existence of probable cause to believe that petitioner had cocaine that he could quickly and easily dispose of, clearly justified Officer Landreville's entry into the apartment five to ten seconds after he knocked at the back door. Other courts of appeals have upheld the validity of searches when the delay between announcement and entry was similarly brief. See, *e.g.*, *United States* v. *Ruminer*, 786 F.2d 381, 384 (10th Cir. 1986) (5-10 second delay); *United States* v. *DeLutis*, 722 F.2d 902, 908-909 (1st Cir. 1983) (20 second delay); *United*

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[3] Petitioner's claim of a conflict (Pet. 11) rests principally upon dictum in *United States* v. *Henderson*, 721 F.2d 662, 664-665 (1983), cert. denied, 467 U.S. 1218 (1984), in which the Ninth Circuit, in upholding the denial of a suppression motion, declined to decide "[w]hether information secured by state officers entirely without federal involvement should be admissible notwithstanding violations of state law." In *United States* v. *Chavez-Vernaza*, 844 F.2d 1368, 1372-1374 (1987), however, the Ninth Circuit rejected the *Henderson* dictum and made clear that the admissibility of evidence obtained through a search by state officers is governed by federal law even where there was no federal participation in the search.

States v. *Davis*, 617 F.2d 677, 695 (D.C. Cir. 1979), cert. denied, 445 U.S. 967 (1980) (15-30 second delay); *United States* v. *Wysong*, 528 F.2d 345, 348 (9th Cir. 1976) (5-10 second delay); *McClure* v. *United States*, 332 F.2d 19, 21 (9th Cir. 1964), cert. denied, 380 U.S. 945 (1965) (4-5 second delay); *Masiello* v. *United States*, 317 F.2d 121, 122 (D.C. Cir. 1963) (20-50 second delay).

Citing *Miller* v. *United States*, 357 U.S. 301 (1958), petitioner also contends that the officers violated the knock-and-announce statute because they failed to announce their purpose.[4] In *Miller*, this Court observed that the knock-and-announce statute prohibited law enforcement officers from forcibly entering a suspect's apartment "without first giving him notice of their authority and purpose." 357 U.S. at 313. But the Court also acknowledged that in some cases "[i]t may be that, without an express announcement of purpose, the facts known to officers would justify them in being virtually certain that the petitioner already knows their purpose so that an announcement would be a useless gesture." *Id.* at 310. Thus, as the court of appeals explained in this case, the proper focus is "not on what 'magic words' are spoken by the police, but rather on how these words and other actions of the police will be perceived by the occupant." Pet. App. 5a. See also *United States* v. *James*, 764 F.2d 885, 888 (D.C. Cir. 1985); *United States* v. *Wysong*, 528 F.2d at 348; *United States* v. *Leon*, 487 F.2d 389, 394 (9th Cir. 1973), cert. denied, 417 U.S. 933 (1974); *United States* v. *Wylie*, 462 F.2d 1178, 1186-1187 (D.C. Cir. 1972); *United States* v. *Manning*, 448 F.2d 992, 1001-1002 (2d Cir.) (en banc), cert. denied, 404

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[4] Petitioner points out (Pet. 17) that the district court did not make any specific findings that the officers stated their purpose before entering the apartment. It appears, however, that the district court did not make any such findings because at the suppression hearing petitioner challenged only the timing of the officers' entry. See Gov't C.A. Br. 11-12.

U.S. 995 (1971). In this case, petitioner and the other apartment occupants responded to the officers' knocking and shouting "police" by gathering in the bathroom. Pet. App. 4a. The court of appeals reasonably concluded that under the circumstances presented here, petitioner had "little doubt of the police purpose" and the officers were not obligated to engage in a further elaboration before entering. *Id.* at 5a-6a. That conclusion does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied. Respectfully submitted.

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